

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

# CASE OF LESZKÓ v. HUNGARY

*(Application no. 40044/18)*

JUDGMENT

STRASBOURG

6 April 2023

*This judgment is final but it may be subject to editorial revision.*



**In the case of Leszkó v. Hungary,**

The European Court of Human Rights (First Section), sitting as a Committee composed of:

Alena Poláčková*, President*,
Péter Paczolay,
Gilberto Felici*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 40044/18) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 17 August 2018 by a Hungarian national, Mr András Leszkó, born in 1976 and living in Békéscsaba ("the applicant"), who was represented by Mr D.A. Karsai, a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government ("the Government"), represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice;

the parties' observations;

Having deliberated in private on 14 March 2023,

Delivers the following judgment, which was adopted on that date:

## SUBJECT MATTER OF THE CASE

1. The application concerns the applicant's concern as to the impartiality of the court that upheld his criminal conviction. It raises issues under Article 6 § 1 of the Convention.

2. In 2016 the applicant, a police officer, was convicted of the crime of complicity by the Szeged High Court. He was sentenced to a demotion and 60 days' committal to a military facility. He was acquitted of the charge of abuse of office; and his accomplice was acquitted of the charge of bribery.

3. On appeal, on 28 September 2016, Bench 6.Kbf. (judges T, S and M) of the Budapest Court of Appeal quashed the judgment and remitted the case to the first instance. In criticising the first-instance judgment, the Court of Appeal found procedural irregularities and, moreover, delved into the question of probative value of testimonies and of shortcomings of logic in the reasoning. Holding that the judgment was ill-founded, it instructed the lower court to hear again the accused and the witnesses, reassess the evidence and supplement the reasoning.

4. In 2017, in the resumed proceedings, the applicant was convicted, this time by the Győr High Court, of bribery and abuse of office. He was sentenced to four years' imprisonment and a fine; his accomplice was sentenced to a fine.

5. On appeal, on 4 April 2018, the exact same Bench 6.Kbf. (judges T, S and M) of the Budapest Court of Appeal upheld the conviction while

somewhat reducing the sentence. The applicant's complaint about the lack of objective impartiality was to no avail.

6. On 2 July 2018 the Constitutional Court dismissed the applicant's constitutional complaint alleging unfair trial.

7. The applicant complained that the repeated participation of Bench 6.Kbf. rendered the trial unfair, in breach of Article 6 § 1 of the Convention.

## THE COURT'S ASSESSMENT

### ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

8. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

9. The applicant argued that his trial failed the objective impartiality test because it was Bench 6.Kbf. that had produced his final conviction whereas the exact same bench had previously given the lower court guidelines pertaining to the merits of the case. The Government maintained that the refusal of the applicant's motion for exclusion had been given in accordance with the relevant procedural guarantees. They stressed that the participation of Bench 6.Kbf. in the 2016 remittal did not encompass a decisive assessment of the merits of the case; consequently, its role in 2018 did not expose its members to any need of abandoning a previous conviction of guilt or innocence.

10. The Court reiterates that there are two tests for assessing whether a tribunal is impartial within the meaning of Article 6 § 1: the first consists in seeking to determine the personal conviction and behaviour of a particular judge in a given case; the second in ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect (see, among many other authorities, *Denisov v. Ukraine* [GC], no. 76639/11, §§ 61-62, 25 September 2018, and *Gautrin and Others v. France*, 20 May 1998, § 58, *Reports of Judgments and Decisions* 1998-III).

11. As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see, among other authorities, *Micallef v. Malta* [GC], no. 17056/06, § 94, ECHR 2009). In the present case, nothing shows that the judges composing Bench 6.Kbf. acted with any personal prejudice. This is not disputed by the parties.

12. As to the second test, when applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to its impartiality. In this respect even appearances may be of some importance. What is at stake is the confidence that the courts in a democratic society must inspire in the public (see *Micallef*, cited above, § 98; *Denisov*,

cited above, § 93; and *Castillo Algar v. Spain*, 28 October 1998, § 45, *Reports* 1998-VIII). It follows that when it is being decided whether in a given case there is a legitimate reason to fear that a particular body lacks impartiality, the standpoint of those claiming that it is not impartial is important but not decisive. What is decisive is whether the fear can be held to be objectively justified (see *Morice v. France* [GC], no. 29369/10, § 76, ECHR 2015, and *Micallef*, cited above, § 96).

13. In the present case, the concerns regarding the Court of Appeal's impartiality stemmed from the fact that its bench was composed of the same three judges who had previously heard the merits of the case on appeal and adopted the decision to quash the judgment of 2016.

14. The Court accepts that this situation could raise doubts in the applicant's mind about the impartiality of the Court of Appeal. However, it has to decide whether those doubts were objectively justified. The answer to this question depends on the circumstances of the case.

15. In this connection, the Court observes that in the first appeal procedure the Court of Appeal dealt with both procedural and substantive questions. Indeed, Bench 6.Kbf. examined the merits of the case. In doing so, it took issue with the probative value of testimonies as accepted by the lower court, and found that the latter had wrongly assessed the evidence and its conclusions had contained errors of logic. Because of its resultant quashing of the judgment, the applicant was re-tried at first instance and convicted of abuse of office, an offence attracting significantly harsher punishment than that of complicity. Subsequently, the same judges of Bench 6.Kbf. were called upon to decide whether the lower court, before which the remitted case was tried, conformed to the law as applied in accordance with their own previous views and instructions.

16. For the Court, these elements may have given the applicant the impression that the Court of Appeal had had an established position as to his guilt, and an appeal in the resumed case to the same bench, no longer impartial, was all but hollow.

17. The Court further notes that the applicant raised his objections as to the impartiality before the appellate court itself as well as before the Constitutional Court. However, both instances dismissed the objection.

18. These circumstances are sufficient to hold the applicant's fears as to the lack of impartiality of the Court of Appeal to be objectively justified.

19. There has accordingly been a breach of Article 6 § 1 of the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 8,000 plus VAT in respect of costs and expenses incurred before the Court.

21. The Government contested these claims.

22. On the basis of equity, the Court awards the applicant EUR 7,800 in respect of non-pecuniary damage.

23. Having regard to the documents in its possession, the Court considers it reasonable to award EUR 5,000 covering costs under all heads.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 April 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Liv Tigerstedt<br>Deputy Registrar | Alena Poláčková<br>President |